

**Family Law Information Centre  
Court Procedure Booklet #28**

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## **Applying for a Consent Order that Does Not Include Child Support**

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The Family Law Information Centre and Queen's Bench Chambers Office cannot give you legal advice or financial guidance, and cannot predict the outcome of court decisions.

This booklet provides general information only. You should speak to a lawyer for legal advice about your own situation.

The Court Procedure Booklets listed on the inside cover of this booklet are available electronically at ***[www.albertacourts.ab.ca](http://www.albertacourts.ab.ca)***.

The Court Procedure Booklets are available for sale from Queen's Printer Bookstore by phoning (780) 427-4952 in Edmonton, or (403) 297-6251 in Calgary, or by phoning 310-0000 toll-free from anywhere in Alberta and asking for either of these phone numbers, or by accessing the Queen's Printer website at ***[www.gov.ab.ca/qp](http://www.gov.ab.ca/qp)***.



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## Family Law Information Centres

The Family Law Information Centres can provide information about:

- the Federal Child Support Guidelines,
- how to calculate child support,
- how to apply for or change a Child Support Order,
- how to oppose an application that involves child support, and
- the procedures that must be followed in other family law matters, such as spousal support and child custody.

Family Law Information Centres can be found at the following locations:

### **Family Law Information Centre, Edmonton**

Law Courts Building  
1A Sir Winston Churchill Square  
Edmonton, Alberta, T5J 0R2  
Tel: 780-415-0404  
Fax: 780-415-0403

### **Family Law Information Centre, Calgary**

Court House Annex  
603 - 6th Avenue SW  
Calgary, Alberta, T2P 0T3  
Tel: 403-297-6600  
Fax: 403-297-6605

## Family Law Information Centre Court Procedure Booklets

### **Applications Dealing With Child Support Or Arrears**

If your application deals with child support or arrears, you should read the booklet "Information for Unrepresented Parties about Child Support Matters" before reading the appropriate procedure booklets below.

#### **Child Support — when both parties live in Alberta**

Obtaining Income Information from the Other Party for Child Support Applications

Applying for an Order for Child Support

Changing an Existing Order for Child Support

Decreasing Child Support, Reducing or Cancelling Arrears, and Stay of Enforcement

Reducing or Cancelling Arrears and Stay of Enforcement (where there is no change to ongoing support)

Applying for an Order for Child Support Under the Parentage and Maintenance Act

Applying for a Consent Order that Includes Child Support

Opposing an Application that Involves Child Support

#### **Child Support — when the respondent lives outside Alberta**

Provisional Application to Change an Order for Child Support - Divorce Act

#### **Spousal Support**

Applying for an Order for Spousal Support

Changing an Existing Order for Spousal Support

#### **Custody and Access**

Applying for an Order for Custody and/or Access

Changing an Existing Order for Custody and/or Access

#### **Combination Applications**

Applying for an Order for Child Support and Custody and/or Access

Changing an Existing Order for Child Support and Custody and/or Access

Applying for an Order for Child Support and Spousal Support

Changing an Existing Order for Child Support and Spousal Support

Applying for an Order for Child Support, Spousal Support and Custody and/or Access

Changing an Existing Order for Child Support, Spousal Support and Custody and/or Access

#### **Restraining or Protection Orders**

Applying for a Restraining Order Without Notice

Applying for a Protection Order on Notice

Review of an Emergency Protection Order

#### **General**

Opposing an Application that Does Not Involve Child Support

Applying for a Consent Order that Does Not Include Child Support

Transferring Your Court File

General Family Law Application

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## **Applying for a Consent Order that Does Not Include Child Support**

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## Contents

About This Booklet .....	1
Before You Begin .....	2
Step 1: Prepare the Order .....	3
Step 2: Have the Order Signed by the Judge .....	4
Step 3: Serve the Order .....	5
Step 4: Prepare and File an Affidavit of Service .....	6
Special Instructions if You Already Have a Court Date . . . .	7
Appendix 1: Explanation of Legal Terms .....	11
Appendix 2: Sample Court Forms .....	19

# Contents

## About This Book

1	Introduction
2	Chapter 1: Getting Started
3	Chapter 2: The Basics
4	Chapter 3: More Basics
5	Chapter 4: Intermediate Topics
6	Chapter 5: Advanced Topics
7	Chapter 6: Special Topics
8	Chapter 7: Appendix A
9	Chapter 8: Appendix B
10	Chapter 9: Appendix C
11	Chapter 10: Appendix D
12	Chapter 11: Appendix E
13	Chapter 12: Appendix F
14	Chapter 13: Appendix G
15	Chapter 14: Appendix H
16	Chapter 15: Appendix I
17	Chapter 16: Appendix J
18	Chapter 17: Appendix K
19	Chapter 18: Appendix L
20	Chapter 19: Appendix M
21	Chapter 20: Appendix N
22	Chapter 21: Appendix O
23	Chapter 22: Appendix P
24	Chapter 23: Appendix Q
25	Chapter 24: Appendix R
26	Chapter 25: Appendix S
27	Chapter 26: Appendix T
28	Chapter 27: Appendix U
29	Chapter 28: Appendix V
30	Chapter 29: Appendix W
31	Chapter 30: Appendix X
32	Chapter 31: Appendix Y
33	Chapter 32: Appendix Z
34	Chapter 33: Appendix AA
35	Chapter 34: Appendix AB
36	Chapter 35: Appendix AC
37	Chapter 36: Appendix AD
38	Chapter 37: Appendix AE
39	Chapter 38: Appendix AF
40	Chapter 39: Appendix AG
41	Chapter 40: Appendix AH
42	Chapter 41: Appendix AI
43	Chapter 42: Appendix AJ
44	Chapter 43: Appendix AK
45	Chapter 44: Appendix AL
46	Chapter 45: Appendix AM
47	Chapter 46: Appendix AN
48	Chapter 47: Appendix AO
49	Chapter 48: Appendix AP
50	Chapter 49: Appendix AQ
51	Chapter 50: Appendix AR
52	Chapter 51: Appendix AS
53	Chapter 52: Appendix AT
54	Chapter 53: Appendix AU
55	Chapter 54: Appendix AV
56	Chapter 55: Appendix AW
57	Chapter 56: Appendix AX
58	Chapter 57: Appendix AY
59	Chapter 58: Appendix AZ
60	Chapter 59: Appendix BA
61	Chapter 60: Appendix BB
62	Chapter 61: Appendix BC
63	Chapter 62: Appendix BD
64	Chapter 63: Appendix BE
65	Chapter 64: Appendix BF
66	Chapter 65: Appendix BG
67	Chapter 66: Appendix BH
68	Chapter 67: Appendix BI
69	Chapter 68: Appendix BJ
70	Chapter 69: Appendix BK
71	Chapter 70: Appendix BL
72	Chapter 71: Appendix BM
73	Chapter 72: Appendix BN
74	Chapter 73: Appendix BO
75	Chapter 74: Appendix BP
76	Chapter 75: Appendix BQ
77	Chapter 76: Appendix BR
78	Chapter 77: Appendix BS
79	Chapter 78: Appendix BT
80	Chapter 79: Appendix BU
81	Chapter 80: Appendix BV
82	Chapter 81: Appendix BW
83	Chapter 82: Appendix BX
84	Chapter 83: Appendix BY
85	Chapter 84: Appendix BZ
86	Chapter 85: Appendix CA
87	Chapter 86: Appendix CB
88	Chapter 87: Appendix CC
89	Chapter 88: Appendix CD
90	Chapter 89: Appendix CE
91	Chapter 90: Appendix CF
92	Chapter 91: Appendix CG
93	Chapter 92: Appendix CH
94	Chapter 93: Appendix CI
95	Chapter 94: Appendix CJ
96	Chapter 95: Appendix CK
97	Chapter 96: Appendix CL
98	Chapter 97: Appendix CM
99	Chapter 98: Appendix CN
100	Chapter 99: Appendix CO
101	Chapter 100: Appendix CP
102	Chapter 101: Appendix CQ
103	Chapter 102: Appendix CR
104	Chapter 103: Appendix CS
105	Chapter 104: Appendix CT
106	Chapter 105: Appendix CU
107	Chapter 106: Appendix CV
108	Chapter 107: Appendix CW
109	Chapter 108: Appendix CX
110	Chapter 109: Appendix CY
111	Chapter 110: Appendix CZ
112	Chapter 111: Appendix DA
113	Chapter 112: Appendix DB
114	Chapter 113: Appendix DC
115	Chapter 114: Appendix DD
116	Chapter 115: Appendix DE
117	Chapter 116: Appendix DF
118	Chapter 117: Appendix DG
119	Chapter 118: Appendix DH
120	Chapter 119: Appendix DI
121	Chapter 120: Appendix DJ
122	Chapter 121: Appendix DK
123	Chapter 122: Appendix DL
124	Chapter 123: Appendix DM
125	Chapter 124: Appendix DN
126	Chapter 125: Appendix DO
127	Chapter 126: Appendix DP
128	Chapter 127: Appendix DQ
129	Chapter 128: Appendix DR
130	Chapter 129: Appendix DS
131	Chapter 130: Appendix DT
132	Chapter 131: Appendix DU
133	Chapter 132: Appendix DV
134	Chapter 133: Appendix DW
135	Chapter 134: Appendix DX
136	Chapter 135: Appendix DY
137	Chapter 136: Appendix DZ
138	Chapter 137: Appendix EA
139	Chapter 138: Appendix EB
140	Chapter 139: Appendix EC
141	Chapter 140: Appendix ED
142	Chapter 141: Appendix EE
143	Chapter 142: Appendix EF
144	Chapter 143: Appendix EG
145	Chapter 144: Appendix EH
146	Chapter 145: Appendix EI
147	Chapter 146: Appendix EJ
148	Chapter 147: Appendix EK
149	Chapter 148: Appendix EL
150	Chapter 149: Appendix EM
151	Chapter 150: Appendix EN
152	Chapter 151: Appendix EO
153	Chapter 152: Appendix EP
154	Chapter 153: Appendix EQ
155	Chapter 154: Appendix ER
156	Chapter 155: Appendix ES
157	Chapter 156: Appendix ET
158	Chapter 157: Appendix EU
159	Chapter 158: Appendix EV
160	Chapter 159: Appendix EW
161	Chapter 160: Appendix EX
162	Chapter 161: Appendix EY
163	Chapter 162: Appendix EZ
164	Chapter 163: Appendix FA
165	Chapter 164: Appendix FB
166	Chapter 165: Appendix FC
167	Chapter 166: Appendix FD
168	Chapter 167: Appendix FE
169	Chapter 168: Appendix FF
170	Chapter 169: Appendix FG
171	Chapter 170: Appendix FH
172	Chapter 171: Appendix FI
173	Chapter 172: Appendix FJ
174	Chapter 173: Appendix FK
175	Chapter 174: Appendix FL
176	Chapter 175: Appendix FM
177	Chapter 176: Appendix FN
178	Chapter 177: Appendix FO
179	Chapter 178: Appendix FP
180	Chapter 179: Appendix FQ
181	Chapter 180: Appendix FR
182	Chapter 181: Appendix FS
183	Chapter 182: Appendix FT
184	Chapter 183: Appendix FU
185	Chapter 184: Appendix FV
186	Chapter 185: Appendix FW
187	Chapter 186: Appendix FX
188	Chapter 187: Appendix FY
189	Chapter 188: Appendix FZ
190	Chapter 189: Appendix GA
191	Chapter 190: Appendix GB
192	Chapter 191: Appendix GC
193	Chapter 192: Appendix GD
194	Chapter 193: Appendix GE
195	Chapter 194: Appendix GF
196	Chapter 195: Appendix GG
197	Chapter 196: Appendix GH
198	Chapter 197: Appendix GI
199	Chapter 198: Appendix GJ
200	Chapter 199: Appendix GK
201	Chapter 200: Appendix GL
202	Chapter 201: Appendix GM
203	Chapter 202: Appendix GN
204	Chapter 203: Appendix GO
205	Chapter 204: Appendix GP
206	Chapter 205: Appendix GQ
207	Chapter 206: Appendix GR
208	Chapter 207: Appendix GS
209	Chapter 208: Appendix GT
210	Chapter 209: Appendix GU
211	Chapter 210: Appendix GV
212	Chapter 211: Appendix GW
213	Chapter 212: Appendix GX
214	Chapter 213: Appendix GY
215	Chapter 214: Appendix GZ
216	Chapter 215: Appendix HA
217	Chapter 216: Appendix HB
218	Chapter 217: Appendix HC
219	Chapter 218: Appendix HD
220	Chapter 219: Appendix HE
221	Chapter 220: Appendix HF
222	Chapter 221: Appendix HG
223	Chapter 222: Appendix HH
224	Chapter 223: Appendix HI
225	Chapter 224: Appendix HJ
226	Chapter 225: Appendix HK
227	Chapter 226: Appendix HL
228	Chapter 227: Appendix HM
229	Chapter 228: Appendix HN
230	Chapter 229: Appendix HO
231	Chapter 230: Appendix HP
232	Chapter 231: Appendix HQ
233	Chapter 232: Appendix HR
234	Chapter 233: Appendix HS
235	Chapter 234: Appendix HT
236	Chapter 235: Appendix HU
237	Chapter 236: Appendix HV
238	Chapter 237: Appendix HW
239	Chapter 238: Appendix HX
240	Chapter 239: Appendix HY
241	Chapter 240: Appendix HZ
242	Chapter 241: Appendix IA
243	Chapter 242: Appendix IB
244	Chapter 243: Appendix IC
245	Chapter 244: Appendix ID
246	Chapter 245: Appendix IE
247	Chapter 246: Appendix IF
248	Chapter 247: Appendix IG
249	Chapter 248: Appendix IH
250	Chapter 249: Appendix II
251	Chapter 250: Appendix IJ
252	Chapter 251: Appendix IK
253	Chapter 252: Appendix IL
254	Chapter 253: Appendix IM
255	Chapter 254: Appendix IN
256	Chapter 255: Appendix IO
257	Chapter 256: Appendix IP
258	Chapter 257: Appendix IQ
259	Chapter 258: Appendix IR
260	Chapter 259: Appendix IS
261	Chapter 260: Appendix IT
262	Chapter 261: Appendix IU
263	Chapter 262: Appendix IV
264	Chapter 263: Appendix IW
265	Chapter 264: Appendix IX
266	Chapter 265: Appendix IY
267	Chapter 266: Appendix IZ
268	Chapter 267: Appendix JA
269	Chapter 268: Appendix JB
270	Chapter 269: Appendix JC
271	Chapter 270: Appendix JD
272	Chapter 271: Appendix JE
273	Chapter 272: Appendix JF
274	Chapter 273: Appendix JG
275	Chapter 274: Appendix JH
276	Chapter 275: Appendix JI
277	Chapter 276: Appendix JJ
278	Chapter 277: Appendix JK
279	Chapter 278: Appendix JL
280	Chapter 279: Appendix JM
281	Chapter 280: Appendix JN
282	Chapter 281: Appendix JO
283	Chapter 282: Appendix JP
284	Chapter 283: Appendix JQ
285	Chapter 284: Appendix JR
286	Chapter 285: Appendix JS
287	Chapter 286: Appendix JT
288	Chapter 287: Appendix JU
289	Chapter 288: Appendix JV
290	Chapter 289: Appendix JW
291	Chapter 290: Appendix JX
292	Chapter 291: Appendix JY
293	Chapter 292: Appendix JZ
294	Chapter 293: Appendix KA
295	Chapter 294: Appendix KB
296	Chapter 295: Appendix KC
297	Chapter 296: Appendix KD
298	Chapter 297: Appendix KE
299	Chapter 298: Appendix KF
300	Chapter 299: Appendix KG
301	Chapter 300: Appendix KH
302	Chapter 301: Appendix KI
303	Chapter 302: Appendix KJ
304	Chapter 303: Appendix KK
305	Chapter 304: Appendix KL
306	Chapter 305: Appendix KM
307	Chapter 306: Appendix KN
308	Chapter 307: Appendix KO
309	Chapter 308: Appendix KP
310	Chapter 309: Appendix KQ
311	Chapter 310: Appendix KR
312	Chapter 311: Appendix KS
313	Chapter 312: Appendix KT
314	Chapter 313: Appendix KU
315	Chapter 314: Appendix KV
316	Chapter 315: Appendix KW
317	Chapter 316: Appendix KX
318	Chapter 317: Appendix KY
319	Chapter 318: Appendix KZ
320	Chapter 319: Appendix LA
321	Chapter 320: Appendix LB
322	Chapter 321: Appendix LC
323	Chapter 322: Appendix LD
324	Chapter 323: Appendix LE
325	Chapter 324: Appendix LF
326	Chapter 325: Appendix LG
327	Chapter 326: Appendix LH
328	Chapter 327: Appendix LI
329	Chapter 328: Appendix LJ
330	Chapter 329: Appendix LK
331	Chapter 330: Appendix LL
332	Chapter 331: Appendix LM
333	Chapter 332: Appendix LN
334	Chapter 333: Appendix LO
335	Chapter 334: Appendix LP
336	Chapter 335: Appendix LQ
337	Chapter 336: Appendix LR
338	Chapter 337: Appendix LS
339	Chapter 338: Appendix LT
340	Chapter 339: Appendix LU
341	Chapter 340: Appendix LV
342	Chapter 341: Appendix LW
343	Chapter 342: Appendix LX
344	Chapter 343: Appendix LY
345	Chapter 344: Appendix LZ
346	Chapter 345: Appendix MA
347	Chapter 346: Appendix MB
348	Chapter 347: Appendix MC
349	Chapter 348: Appendix MD
350	Chapter 349: Appendix ME
351	Chapter 350: Appendix MF
352	Chapter 351: Appendix MG
353	Chapter 352: Appendix MH
354	Chapter 353: Appendix MI
355	Chapter 354: Appendix MJ
356	Chapter 355: Appendix MK
357	Chapter 356: Appendix ML
358	Chapter 357: Appendix MM
359	Chapter 358: Appendix MN
360	Chapter 359: Appendix MO
361	Chapter 360: Appendix MP
362	Chapter 361: Appendix MQ
363	Chapter 362: Appendix MR
364	Chapter 363: Appendix MS
365	Chapter 364: Appendix MT
366	Chapter 365: Appendix MU
367	Chapter 366: Appendix MV
368	Chapter 367: Appendix MW
369	Chapter 368: Appendix MX
370	Chapter 369: Appendix MY
371	Chapter 370: Appendix MZ
372	Chapter 371: Appendix NA
373	Chapter 372: Appendix NB
374	Chapter 373: Appendix NC
375	Chapter 374: Appendix ND
376	Chapter 375: Appendix NE
377	Chapter 376: Appendix NF
378	Chapter 377: Appendix NG
379	Chapter 378: Appendix NH
380	Chapter 379: Appendix NI
381	Chapter 380: Appendix NJ
382	Chapter 381: Appendix NK
383	Chapter 382: Appendix NL
384	Chapter 383: Appendix NM
385	Chapter 384: Appendix NN
386	Chapter 385: Appendix NO
387	Chapter 386: Appendix NP
388	Chapter 387: Appendix NQ
389	Chapter 388: Appendix NR
390	Chapter 389: Appendix NS
391	Chapter 390: Appendix NT
392	Chapter 391: Appendix NU
393	Chapter 392: Appendix NV
394	Chapter 393: Appendix NW
395	Chapter 394: Appendix NX
396	Chapter 395: Appendix NY
397	Chapter 396: Appendix NZ
398	Chapter 397: Appendix OA
399	Chapter 398: Appendix OB
400	Chapter 399: Appendix OC
401	Chapter 400: Appendix OD
402	Chapter 401: Appendix OE
403	Chapter 402: Appendix OF
404	Chapter 403: Appendix OG
405	Chapter 404: Appendix OH
406	Chapter 405: Appendix OI
407	Chapter 406: Appendix OJ
408	Chapter 407: Appendix OK
409	Chapter 408: Appendix OL
410	Chapter 409: Appendix OM
411	Chapter 410: Appendix ON
412	Chapter 411: Appendix OO
413	Chapter 412: Appendix OP
414	Chapter 413: Appendix OQ
415	Chapter 414: Appendix OR



## About this Booklet

This booklet outlines what you must do when applying for an Order when the other party has agreed to sign their consent. This is a very formal process that is designed to ensure fairness. It is important that you follow each step carefully and thoroughly. The legal terms that you will need to know are explained in Appendix 1.

**If the Order includes child support**, do not use this booklet. Refer to the Court Procedure Booklet, *Applying for a Consent Order that Includes Child Support*.

**If you are applying to reduce arrears of support and the person who was receiving support was on Social Assistance at any time while the child or spousal support was payable**, you cannot use this booklet. Instead refer to the Court Procedure Booklet, *Reducing or Cancelling Arrears and Stay of Enforcement (where there is no change to ongoing support)*.

**If the parents cannot agree on the terms of the Order**, do not use this booklet. In this case, an application must be made to the court on notice to the other parent. For more information, see the list of Court Procedure Booklets on the inside front cover of this booklet.

**If you already have a court date and have now reached an agreement**, you may still use this booklet. See the special instructions starting on page 7.

You should speak to a lawyer to determine if you have sufficient reasons to make the application, what evidence should be presented to the court, and possible outcomes for your application.

If you decide to go ahead without a lawyer, you may need to consult other sources of information as you prepare your application. You can find the following documents at your local court house library, other libraries or at the listed websites:

- *Alberta Rules of Court* - [www.gov.ab.ca/qp/rules.html](http://www.gov.ab.ca/qp/rules.html)
- *Family Law Practice Notes (attached to the Alberta Rules of Court)* - [www.albertacourts.ab.ca/webpage/qb/qb\\_family\\_law\\_practice\\_notes.htm](http://www.albertacourts.ab.ca/webpage/qb/qb_family_law_practice_notes.htm)

- *Divorce Act* - [founder.library.ualberta.ca/ftp/en/laws/title/d/index.html](http://founder.library.ualberta.ca/ftp/en/laws/title/d/index.html)
- *Domestic Relations Act and Maintenance Enforcement Act* - [www.gov.ab.ca/qp/acts.html](http://www.gov.ab.ca/qp/acts.html)

## **Before You Begin**

### **There must be a Court Action Started**

Before you can make an application, there must be an existing Alberta court action between you and the other party.

If you want to change an existing Order, you will need a copy of that Order or Divorce Judgment. If you don't have a copy, you can get a copy of your Order from the court house where it is filed. There will be a fee for this service.

The Order or Judgment will give you the court action number and tell you exactly what was originally ordered. You can also use it to show which paragraph(s) of the Order or Judgment you want to change.

If there is no order or judgment yet in place, you can find your court action number on the backer of any of the court documents. If you do not have any of your court documents, you can find out the court action number from the Clerk's office in the court house where the action was filed. There will be a fee for this service.

Your application must be made, and all documents filed, in the judicial district where your initial action (for example, divorce) was filed. A list of all Chambers or Clerk's Offices located across the province (the Judicial districts) is on the inside back cover of this booklet.

If you want to transfer your court file to another judicial district, see the Court Procedure Booklet, *Transferring Your Court File*.

### **Parenting After Separation Seminar**

If you haven't already, you may have to attend the Parenting After Separation Seminar before you make your application. For more information about this, see the *Notice Of Mandatory Seminar* sheet, which is available from the Family Law Information Centre (please see the inside front cover of this booklet for locations) or Chambers Office (Clerk's Office).



## **Step 1 Prepare the Order**

### **1-1 Prepare the Order**

There is a sample Consent Variation Order beginning on page 21. This order is to be used when you want to change an existing order.

If there is no existing Order, you will need a different form of Consent Order. You may obtain a sample Consent Order from where you received this booklet, or on the Internet at [www.albertacourts.ca](http://www.albertacourts.ca)

Add or remove paragraphs, or change the wording of the sample order as necessary to reflect the agreement that you have reached with the other party.

Some sample terms are on pages 31 and 33. You may need to change or adapt these sample terms to suit your own situation.

**Note:** If your Consent Order includes child or spousal support or deals with arrears of child or spousal support, you must include the Maintenance Enforcement clause found on page 43. The clerk cannot file the Consent Order without this clause.

Each of the terms of the Order should be written in separate paragraphs, and numbered consecutively (1,2,3...).

The judge may not be prepared to sign an order with paragraphs crossed off, or if significant changes have been made to the document. In this case, you will have to re-type the Order.

### **1-2 Have the respondent sign the Order**

The respondent must sign the Order, print their name underneath their signature, and initial any changes once it is prepared. This signature shows that the respondent agrees with all of the terms that are in the Order. The respondent's signature appears below the line "Consented to:." Please note that if the respondent is represented by a lawyer, the lawyer will sign the Order rather than the respondent. The lawyer's signature does not have to be witnessed.

The respondent's signature must be witnessed by someone other than the applicant. Have the witness complete and sign an Affidavit of Execution in front of a commissioner for oaths. Please note that the chambers clerk will not act as a witness.

## **Step 2 Have the Order Signed by the Judge**

The Affidavit of Execution is attached to the Order just in front of the backer.

**Note:** You cannot make any changes to the Order after the respondent has signed it. If changes are needed, you must prepare a new order and have it signed and witnessed as set out above.

### **1-3 Prepare the Ex Parte / Consent Form**

Fill in the Ex Parte/Consent form. See sample on page 35.

### **2-1 Make copies of your documents and bring them to the Clerk**

You will need to make the following number of copies of each document:

- Three copies of your Order (total of four with the original). If your Order includes spousal support or deals with arrears of child or spousal support, make four copies of your Order (total of five with the original)
- Your original Ex Parte / Consent form

Bring the originals and the copies of these documents to the Chambers Office for filing. The address for the Chambers Office in each judicial district is on the inside back cover of this booklet. In smaller centres, the Chambers Office may not be a separate section, but would be part of the Queen's Bench Clerk's Office.

The Chambers Clerk will present the documents to the judge at a later time. If the Order is signed, three copies will be returned to you.

If you want to have the Order mailed back to you, include a stamped, self-addressed 9" x 12" envelope. Include enough postage so that the Chambers Clerk can return three copies of the Order to you. Check with the post office to make sure that you have the correct postage by having the envelope weighed.

The Chambers Clerk or the judge may tell you that you have to file an Affidavit along with your Consent Order. Sample Affidavits are available where you received this booklet or on the Internet at [www.albertacourts.ca](http://www.albertacourts.ca).



## Step 3 Serve the Order

### 3-1 Serve the Order on the Respondent

The *Alberta Rules of Court* contains specific rules to guarantee that the respondent has been notified of a court action, application or any resulting court order. These rules refer to the “serving” of documents on the respondent. You may want to refer to *Rules 13 to 26* of the *Alberta Rules of Court* for the procedure for service of court documents.

The respondent must receive one filed copy of the Consent Order.

**Note:** Do not serve the certified copy of the Order (that has the raised seal). You will need the certified copy when you prepare your Affidavit of Service. See step 4.

You can serve the documents either by having them delivered in person or sending them by registered mail.

If you have the Order delivered in person, the respondent is properly served only if the Order is handed directly to the respondent. You should get another person to deliver the Order. This avoids possible conflict. It also avoids a possible disagreement between you and the respondent about whether the Order was actually served.

If you use registered mail, the Order is not properly served until the respondent has signed for the documents. Make sure to keep the customer receipt. It will have the item identifier number of your registered mail. To prove you served the Order, you will need both the Delivery Confirmation Record and the Acknowledgement of Receipt (or signature copy) from Canada Post. You will need the item identifier number of your registered mail to get the Delivery Confirmation Record or the Signature Copy.

The Delivery Confirmation Record is available at Canada Post’s Internet website for a period of 45 days at [www.canadapost.ca](http://www.canadapost.ca), or by calling Canada Post Customer Service at 1-888-550-6333 for a period of 24 months. You must also specifically request the Signature Copy from Canada Post by calling 1-888-550-6333. There is a fee for this service.



## **Step 4 Prepare and File an Affidavit of Service**

### **3-2 Delivering the Order to the Director of Maintenance Enforcement**

If the Consent Order includes spousal support or deals with arrears of child or spousal support, the Chambers Clerk will send a copy of the Order to the Director of Maintenance Enforcement. However, you may want to immediately provide a filed copy of the Order to MEP yourself so that they can act on it. The address for MEP is:

The Director of Maintenance Enforcement Program  
7<sup>th</sup> Floor, J.E. Brownlee Building,  
10365 - 97 Street  
Edmonton, Alberta T5J 3Z7  
phone: (780) 422-5554 or toll free in Alberta at 310-0000  
and ask for (780) 422-5554  
fax: (780) 422-1215

### **4-1 Prepare the Affidavit of Service**

There is a sample Affidavit of Service beginning on page 39. The Affidavit of Service is used to explain how and when the respondent received a copy of the Order. The person who served the respondent must provide the information about service. The certified copy of the Order must be attached to the Affidavit of Service as an exhibit.

The person who served the documents must swear or affirm before a commissioner for oaths that the contents of the Affidavit of Service are true.

A Chambers Clerk may act as a commissioner for oaths. The person who signs the Affidavit may be asked to show personal identification.

### **4-2 Copy the Affidavit of Service**

Make one copy of the complete Affidavit of Service. The complete Affidavit consists of the Affidavit of Service with the certified copy of the Order attached as an exhibit.

### **4-3 File the Affidavit of Service**

File the original and the copy of the Affidavit of Service with the Chambers Office. They will return one filed copy to you.

## **Special Instructions if you already have a court date**

If you have started an application on notice to the other party (using one of the other court procedure booklets), you will have been given a court date. If you have now reached an agreement with the respondent as to the terms of the Order, you have two choices:

- A. you may attend court on your scheduled court date, or
- B. you may cancel the court date, and submit the Order as a “desk” application.

### **A. If you choose to attend court on your scheduled court date**

Prepare the Consent Order and have it signed by the respondent, the witness and the Commissioner for Oaths. Follow steps 1-1 and 1-2 of this booklet starting on page 3.

Read “Points to Remember When Representing Yourself in Court” on page 10.

Go to court on your scheduled court date with your original Consent Order.

Find your court room number by checking the Chambers lists which are posted in the court house. You can also check with a clerk. Make sure you have the correct court room number. There may be more than one court room in the building hearing family matters at the same time.

Your application will be assigned a number on the chambers list. This number will be called when it is time for your application to be heard.

Other matters will be scheduled in court at the same time as your own. You can step forward when court begins, and the judge asks for “Any Consent Orders”, or you may prefer to wait until you (or your number) are called.

Tell the judge you have a Consent Order, and hand the Consent Order to the clerk in court. The clerk will hand it to the judge.

The judge will review your documents, and may have some questions for you. If the Order is acceptable, the judge will sign it and hand it back to you.

Make 3 copies of the signed Order (total of four with the

original) and file them with the Chambers Clerk. If your Order includes spousal support or deals with arrears of child or spousal support, you will need to make 4 copies of the signed Order (total of five with the original) and file them with the Chambers Clerk. You will receive one certified, and two filed copies of the Order from the Clerk.

Serve the filed Order on the respondent. Follow steps 3 and 4 of this booklet.

**B. If you choose to cancel your court date and submit the Order as a "desk" application**

If you have reached an agreement with the respondent, you do not have to wait for your court date. You may instead follow steps 1 through 4 of this booklet.

If you proceed by this method, once the Consent Order is signed by the respondent (you have completed step 1) you must cancel your court date. To do so, speak to the Chambers Clerk when you are filing your order, or phone the Chambers Clerk before the court date. The phone numbers for the Chambers Clerks are on the inside back cover of this booklet. You must tell the respondent that the court date is cancelled. If you do not cancel your court date, or do not tell the respondent that the court date has been cancelled, you may be required to pay court costs.

**Note:** If the Consent Order has not been typed up or signed by the respondent (you have not completed step 1), you may want to adjourn your court date instead of cancelling it. See the instructions below.

**Adjourning a court application**

You may not be prepared to proceed with your court application because you are in the process of negotiating the terms of a Consent Order, but have not had the time to have the Consent Order typed up or signed. In that case, you and the respondent may agree that the application should be adjourned or delayed.

To adjourn an application by telephone, call the Chambers Clerk no later than 9:30 on the morning of your court date. Tell the clerk that you and the respondent have agreed to adjourn the application, and the new date that you



have agreed to. The Chambers Clerk may ask you for the court action number. **You can only adjourn by telephone if both parties agree.**

After you have notified the clerk, you must confirm the adjournment in writing. Write a short letter to the clerk providing:

- the full names of both parties,
- the court action number,
- the date your application was to be heard,
- the new court date, and
- the fact that both parties agreed to the adjournment.

Fax or deliver the letter before your original court date. You can ask the clerk for the fax number.

You can also adjourn your application by attending in court on the original court date and asking the judge to adjourn the application. If the respondent agrees, the judge will adjourn the application to the new court date. If the respondent does not agree, the judge will ask you to explain why you want the adjournment. The judge will also ask the respondent why they are against the adjournment. Then the judge will decide whether or not your application will be adjourned.

## **Points to Remember When Representing Yourself in Court**

The court house is a very traditional place. When you are representing yourself it is up to you to persuade the judge that your position is right. For this reason you must act, dress and speak in a way which helps and does not distract from your case. Here are some tips:

1. When you come to court, dress in clothes that are clean, neat and in good repair. You should be clean and neatly groomed.
2. How you act is as important as how you look. Be respectful to everyone in the court house, which includes the judges, court staff, lawyers, the other party involved in your case and security officers.
3. The court has a very busy schedule. Be on time for any application, case management meeting, pre-trial conference, or trial, or there may be consequences. For example, if you are late for an application, your application may be dismissed if you are the applicant or, if you are the respondent, the court may proceed without you.
4. The judge will not speak to you about your case except during a scheduled application, case management meeting, pre-trial conference or trial, and when the other party or lawyer is present.
5. Wait until you are addressed by the judge before talking, otherwise the judge will not respond.
6. Staff in the clerk's office cannot give you legal advice or recommendations on what you should do. Always be polite to court house staff and provide them with any information or materials that are requested.
7. When you represent yourself it is very important that you bring all necessary materials to support your application. You may be able to get legal advice from a lawyer ahead of time to make sure you are proceeding correctly and have all the right materials in their required form. Some lawyers will provide assistance with the preparation of these documents.
8. When you are attending a chambers application and the case is called, come forward to the counsel table at the front of the court room and tell the judge who you are. Always stand when you are addressing the judge. Refer to male judges as "My Lord" and female judges as "My Lady." Speak slowly in a clear voice with sufficient volume.
9. Be respectful to the judge, any counsel and the other party. Do not speak out of turn. Outbursts, inappropriate language and displays of temper will not be tolerated and could well influence the outcome of your application.

## **Appendix 1: Explanation of Legal Terms**

The following terms are used throughout this booklet and during the application process.

### **Action**

A lawsuit or an application made in the courts. For example, when you apply to the court for a change in child support or to gain custody of a child, you are taking a legal action. You may take a legal action to enforce your rights or to correct a wrong done to you by another person. When an action is started, the court assigns it an action number. This number is then used in all of the documents related to the action filed with the court. See *Rules of Court: Rules 6-12 and Rule 563*.

### **Affidavit**

A written statement of facts that a person swears or affirms are true before a commissioner for oaths. The facts in the statement will be used as evidence in court. See definitions for evidence and fact. Affidavits may also be used to prove the identity of the person signing a document and to prove that you have delivered documents to another person. These types of Affidavits are called an Affidavit of Execution and an Affidavit of Service and are explained below. See *Rules of Court: Rules 298-314 and Family Law Practice Note 3*.

### **Affidavit of Execution**

This is a written statement in which a person swears or affirms that they witnessed another person signing a document and verifies the identity of the person signing.

### **Affidavit of Service**

This is a written statement telling when, where and how documents have been served on another person, and how that person was found and identified. It is sworn or affirmed to and signed by the person who served the documents. See the definition for service.

### **Applicant**

The person who is making an application to the court. See the definitions for respondent and application.



## **Application**

Asking the court to make an Order. You can make several applications in the course of a court action. See the definitions for action, Notice of Motion and Order. See *Rules of Court: Rule 384-387 and 573-574* and *Family Law Practice Note 3*.

## **Approval as to Form and Content**

Signing an Order that was not signed by the judge when the application was made. If an Order is not signed by the judge when the application is made, the respondent must sign the Order to show that they agree that the Order they receive is the same as the Order given by the judge in court. This does not mean that the person agrees with the Order. See the definition for consent. See *Rules of Court: Rule 323.1*.

## **Arrears**

Any amount that has not been paid on a Support Order. If the monthly amounts ordered to be paid are not paid, they become arrears. Arrears can only be reduced by payment or by Order of the court.

## **Backer**

The last page of a court document. It lists the action number, style of cause and your address on the right-hand side of the page. See definitions for action and style of cause.

## **Chambers (court)**

A type of court where the judge makes a decision based upon affidavit evidence alone rather than oral testimony. Chambers applications usually take 10 to 20 minutes in total. If they are more complicated, they should be scheduled for a special chambers date. At some court houses, there is a separate chambers for family matters.

## **Chambers Clerk / Clerk's Office**

Person in charge of reviewing and filing of court documents ( Notices of Motion, Affidavits, all related court orders, etc.), commissioning of Affidavits for court matters, and processing documentation for scheduling of court lists. The clerk can provide information on available court dates, and filing deadlines.

## **Chambers Office / Clerk's Office**

A department of the Court of Queens Bench Clerks Office. In smaller centres, the Chambers section may not be a separate section, but would be part of the Queens Bench Clerk's Office. The chambers office deals with chambers matters only. See definition for Clerk in Chambers for functions of the chambers office.

## **Clerk in Court**

Person who organizes the court files and records the outcome of the court application for the judge. The clerk sits at the front of the court below the judge.

## **Commissioner for Oaths**

Someone authorized by the province to swear or "commission" affidavits. Lawyers and court clerks are commissioners for oaths. Often banks and real estate offices have commissioners.

## **Consent**

When a person voluntarily agrees to something proposed by another. If you sign an Order saying you are consenting to the Order, you are saying that you agree with everything that has been stated in the Order.

## **Consent Order**

A Court Order signed by both parties showing they agree with everything that is in the Order.

## **Corollary Relief**

Orders that may be granted at the time of divorce. Some examples of this are Orders related to custody, access and child support.

## **Costs**

This is money that must be paid to another party or to the court. You may be ordered to pay costs if you are unsuccessful with your application or if you fail to attend a scheduled court date. See *Rules of Court: Schedule C*.

## **Court**

In this booklet, court refers to the Alberta Court of Queen's Bench.

## **Defendant**

The person responding to a court action. If you start a divorce action, you are the plaintiff and your spouse is the defendant.

## **Evidence**

In court, the statements that are given under oath or the documents or other items that are shown to prove your case or disprove another person's case.

## **Ex Parte**

(Pronounced "x party") An application made in the court without notice to the Respondent. This type of application is made only in extraordinary circumstances, when some harm may result to the Applicant or certain property if the Respondent is notified of the application before it is heard.

## **Exhibit**

Any paper or document that is referred to, or mentioned, in an Affidavit. It should then be marked as an "Exhibit" and attached as a part of the Affidavit. See *Rules of Court: Rules 311-312*.

## **Fact**

A thing that is known to have occurred, to exist, or to be true. It is a piece of factual evidence. See *Rules of Court: Rules 305(1)*.

## **File / Filing**

Giving documents to the court clerk to place on the court file. Any documents to be filed must have a backer, with the action number written on it, so that the clerk can find the file. See *Rules of Court: Rules 8-9*.



## **Gross**

The total amount before any deductions. For example, gross income would be the total dollars that a person receives before any income taxes are deducted. The gross cost of daycare is the cost of daycare before any subsidies or income tax deductions are taken into account. See definition of net.

## ***In Loco Parentis***

A legal term for someone who is not a biological parent of a child but who acts like a parent to the child. The court may treat that person the same as a biological parent for custody and access rights. The court may also decide that the person has a financial responsibility to support the child.

## **Judge**

In this booklet, judge means a Justice of the Court of Queen's Bench.

## **Judicial Districts**

Locations of Courts of Queen's Bench. These include Grande Prairie, Peace River, Fort McMurray, St. Paul, Edmonton, Wetaskiwin, Red Deer, Calgary, Drumheller, Lethbridge and Medicine Hat. See the inside back cover of this booklet for addresses and phone numbers.

## **Maintenance Enforcement Program (MEP)**

A provincial government department that is authorized to collect child and spousal support on behalf of the person entitled to receive the support. MEP may take steps such as garnishee (seizure) of bank accounts and pay cheques, seizure of assets, and suspension of driver's licences if support payments are not made voluntarily. MEP cannot reduce the amount of support payable, and MEP will not stop enforcing the Order unless instructed to do so either by the creditor or by the court. See definition of Stay of Enforcement.

## **Order**

What the judge directed in court. The Order is then written up by the applicant and signed by the judge, or by the clerk of the court on the judge's behalf. See the definition for approval as to form and content. See *Rules of Court: Rules 315-330*.

## **Party**

Someone who is directly involved in the court action or application. A party is either a plaintiff or defendant, or an applicant or respondent.

## **Petitioner**

The person who starts a court action, for example, a divorce action. Divorces started before 1997 named the parties as petitioner and respondent. After 1997, they were named plaintiff and defendant.

## **Plaintiff**

The person who starts a court action, for example a divorce action. See definition for defendant.

## **Respondent**

A person who is responding to an application to the court. See definition for applicant.

## **Rules of Court**

A book of rules that contains the basic procedures that must be followed for beginning and carrying out a court action.

## **Service**

Delivering a document to the other party in an action or application. The documents must be served in a way that is described in the *Rules of Court* or allowed by the court in an Order for Substitutional Service. See *Rules of Court: Rules 13-26 and 564*.

## **Statement of Claim**

A document that starts a court action unless stated otherwise in the *Rules of Court* or legislation. See *Rules of Court: Rule 6(1)*.

## **Statute**

A law passed by the government. For example, the *Divorce Act* is a law passed by the federal government and the *Parentage and Maintenance Act* is a law passed by the provincial government.

## **Stay of Enforcement**

An Order of the Court of Queen's Bench telling the Maintenance Enforcement Program to stop taking steps to collect any support that is still owed by a person. A Stay of Enforcement is often ordered for a limited time period, and is usually ordered with conditions imposed upon the person who is required to pay the support. For example, one condition may be that minimum monthly payments must be made or the Stay of Enforcement will end.

## **Style of Cause**

The part of any court document that identifies the type of court, and the place where the action will be heard (judicial district), the full names of the parties, and the name of the document. The Style of Cause is found at the top of the first page and on the backer of every court document filed. It must be exactly the same in all documents.

## **Substitutional Service Order**

If it is impossible or impractical to serve the respondent personally with court documents, you may ask the court for an Order that will allow you to serve the respondent in a different way. The court may then grant a Substitutional Service Order. This defines how you can serve the respondent with the court documents. Examples of substitutional service are posting the document on the person's door, delivery by regular mail or courier, delivery to someone else who knows or lives with the person, or advertising in a newspaper. See *Rules of Court: Rule 23*.

## **Support Order**

An Order made by a court directing that money be paid, usually on a monthly basis, for either spousal support or child support. The word "maintenance" can be used instead of "support." In the past, the term "alimony" was used to refer to spousal support.

## **Variation Order**

A Court Order that changes the terms of an existing Court Order. See *Rules of Court: Schedule B, Form 19*.





## **Appendix 2: Sample Court Documents**

### **What forms are included**

The following forms are contained in this booklet:

- Consent Variation Order (pages 21 - 33)
- Ex Parte / Consent Form (pages 35 - 37)
- Affidavit of Service (Service of the Order)  
(pages 39 - 47)

### **General Instructions for Completing Court Documents**

- These forms have been developed for typical users. If your document is more complicated or requires more space for writing, then you will have to re-type the form.
- All documents must be readable.
- Photocopy the forms you need from the booklet and work on the photocopies as your "rough copy." Keep the originals to prepare your final copy. You should read the form carefully before beginning to fill it out.
- Fill in all the blank lines with requested information, by either hand printing or typing, (except where signatures are required).
- Note that there is a style of cause (see Explanation of Legal Terms) at the top of the first page and on the backer of each form. Make sure that the style of cause on the first page is filled out in the same way as the one on the backer.
- The backer is the last sheet of the form. Fill in the backer with the requested information, making sure to include your court action number. The backer should be reversed so that the type faces out and is visible once the whole document is stapled together.

## **How to delete information from a document**

- If there are paragraphs that do not apply to you, you should cross them off.
- To cross off paragraphs, draw a straight horizontal line, in ink, through both the first and last lines of the paragraph, then draw a straight diagonal line joining these lines and forming a letter "Z."
- To cross off a single sentence, draw a horizontal line, in ink, through the middle of the sentence.
- If portions of an order are crossed off, both you and the respondent must initial the changes, at the beginning and end of every strikeout that you make.
- You cannot use "white out" on any court documents. Any corrections or deletions must be neat and readable.



## Consent Variation Order

Use this Order when there has been an order filed in the Court of Queen's Bench in a divorce action and you want to change that Order.

Make sure that:

- ☐ your full name and the respondent's full name are included in the form and on the backer
- ☐ you fill in paragraph 1 with information about the Judgment or Order that this Order changes
- ☐ you include all of the terms of the Order
- ☐ you add or cross off paragraphs, or change the wording of the sample Order as necessary to reflect the Order given by the judge in court. Sample terms are on pages 31 and 33. These terms are just samples. If you need to add paragraphs or other terms you may need to re-type the sample Order
- ☐ you add the Maintenance Enforcement clause found on page 33, if your order includes spousal support, or deals with arrears of child or spousal support
- ☐ the respondent has signed his/her signature on the Order below the line "Consented to". The name of the respondent is printed underneath their signature. The respondent's signature must be witnessed by someone other than the applicant. The witness to the respondent's signature will need to complete the attached Affidavit of Execution and swear or affirm it before a commissioner for oaths.
- ☐ you number all of your paragraphs consecutively (1, 2, 3, 4)
- ☐ you make three copies of your Order (total of four with the original) and take them to the Chambers Office. If your order includes spousal support, or deals with arrears of child or spousal support, you make four copies of your Order (total of five with the original) and take them to the Chambers Office.

Use a ruler when crossing off the paragraphs that don't apply to you. Cross them out by drawing a straight line through the first and last lines and a diagonal line joining them to form a "Z."

Make sure that you and the respondent each put your initials at the beginning and at the end of every strikeout that you make. You cannot use "white out".

The judge may not be prepared to sign an Order with crossed off sections or handwritten paragraphs. In this case, you will have to re-type the Order. Also, a judge's signature cannot appear on a page by itself.



Action No: \_\_\_\_\_  
YOUR COURT ACTION NUMBER

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
IN THE JUDICIAL DISTRICT OF \_\_\_\_\_

BETWEEN:

\_\_\_\_\_  
YOUR NAME Applicant  
- and -  
\_\_\_\_\_  
OTHER PARTY'S NAME Respondent

BEFORE THE HONOURABLE ) ON \_\_\_\_\_, THE \_\_\_\_\_  
MADAM/MR. JUSTICE \_\_\_\_\_ ) WEEKDAY DATE  
DAY OF \_\_\_\_\_  
MONTH YEAR  
COURT HOUSE, \_\_\_\_\_, ALBERTA)

## CONSENT VARIATION ORDER

UPON THE APPLICATION of the Applicant; AND UPON NOTING the consent of the Respondent endorsed at the end of this Order;

IT IS HEREBY ORDERED THAT:

1. The Judgment/order granted \_\_\_\_\_, \_\_\_\_\_ by the Honourable  
DATE (MONTH AND DAY) YEAR  
Madam/Mr. Justice \_\_\_\_\_ is hereby varied to delete paragraph \_\_\_\_\_  
of the said Judgment/order.

\_\_\_\_\_  
SET OUT ALL OTHER TERMS OF THE ORDER GRANTED BY THE COURT IN SEPARATE NUMBERED PARAGRAPHS (2,3,4...)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





TERMS OF THE ORDER MUST CONTINUE ONTO THE PAGE WITH THE JUDGE'S SIGNATURE

JUSTICE OF THE COURT OF QUEEN'S  
BENCH OF ALBERTA

CONSENTED TO:

SIGNATURE OF RESPONDENT

SIGNATURE OF WITNESS TO RESPONDENT

PRINT NAME OF RESPONDENT

ENTERED THIS \_\_\_\_\_ DAY OF,

\_\_\_\_\_, \_\_\_\_\_

CLERK OF THE COURT



IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
IN THE JUDICIAL DISTRICT OF \_\_\_\_\_

BETWEEN:

\_\_\_\_\_  
YOUR NAME

Applicant

- and -

\_\_\_\_\_  
OTHER PARTY'S NAME

Respondent

**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_,  
NAME OF WITNESS 'CITY', 'TOWN' OR OTHER NAME OF CITY OR TOWN ETC.

in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I was personally present and did see \_\_\_\_\_  
OTHER PARTY'S NAME  
named in the within Order, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. The same was executed at the \_\_\_\_\_ of \_\_\_\_\_, in the  
'CITY', 'TOWN' OR OTHER NAME OF CITY OR TOWN ETC.  
Province of Alberta and that I am the subscribing witness thereto.
3. I know the said \_\_\_\_\_ and he/she is in my belief of the full  
OTHER PARTY'S NAME  
age of eighteen (18) years.

SWORN BEFORE ME at the \_\_\_\_\_  
of \_\_\_\_\_, in the Province  
of Alberta, this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE OF THE PERSON MAKING AFFIDAVIT

\_\_\_\_\_  
A COMMISSIONER FOR OATHS IN  
AND FOR THE PROVINCE OF ALBERTA





Action No: \_\_\_\_\_  
YOUR COURT ACTION NUMBER

IN THE COURT OF QUEEN'S BENCH OF ALBERTA IN  
THE JUDICIAL DISTRICT OF  
\_\_\_\_\_

BETWEEN:

\_\_\_\_\_  
YOUR NAME

Applicant

- and -

\_\_\_\_\_  
OTHER PARTY'S NAME

Respondent

\_\_\_\_\_  
**CONSENT VARIATION ORDER**

\_\_\_\_\_  
YOUR NAME

\_\_\_\_\_  
YOUR ADDRESS

\_\_\_\_\_  
YOUR PHONE NUMBER



## SAMPLE TERMS TO INCLUDE IN YOUR ORDER

The following paragraphs are some example terms that may fit your case. Change or adapt these examples to suit your own situation. You will have to write your own terms that reflect the Order given by the judge in court.

*Note: These terms are not actual legal advice. They simply show you how to present information that may be needed in special circumstances. These samples do not replace your need to get legal advice.*

### Custody and Access:

#### [Sole custody, reasonable access to the other party]

\_\_\_\_\_.  
FULL NAME shall have sole custody  
of the children, \_\_\_\_\_,  
NAMES OF CHILDREN and  
\_\_\_\_\_.  
FULL NAME shall have  
reasonable and generous access.

#### [Joint custody, children live with one party, reasonable access to the other party, with minimum specified access]

\_\_\_\_\_.  
FULL NAME and \_\_\_\_\_  
FULL NAME shall have joint custody of the children,  
\_\_\_\_\_ with the children's  
NAMES OF CHILDREN  
primary residence to be with \_\_\_\_\_.  
FULL NAME

AND

\_\_\_\_\_.  
FULL NAME shall have  
reasonable access to the children, such  
access to include but not be limited to  
the following specified access:  
(Give details)

#### [Sole custody to one party, detailed access to the other party]

\_\_\_\_\_.  
FULL NAME shall have sole custody  
of the children, \_\_\_\_\_,  
NAMES OF CHILDREN and  
\_\_\_\_\_.  
FULL NAME shall have the following  
specified access: (Give details)

#### [Shared Custody - Section 9 of Federal Child Support Guidelines]

\_\_\_\_\_.  
FULL NAME and \_\_\_\_\_  
FULL NAME  
shall have shared custody of the  
children, \_\_\_\_\_,  
NAMES OF CHILDREN as follows:

(Give details of the time each party  
has access to or physical custody of  
children over the course of the year)

#### [Clauses imposing restrictions on access]

\_\_\_\_\_.  
FULL NAME shall not be entitled  
to overnight access.

\_\_\_\_\_.  
FULL NAME shall notify \_\_\_\_\_  
FULL NAME  
at least 24 hours in advance if he/she  
intends to exercise access [or...if  
he/she is not able to exercise access as  
scheduled].

\_\_\_\_\_. All access visits shall be supervised by  
\_\_\_\_\_.  
FULL NAME or any adult person  
chosen by mutual agreement between  
the parties.

\_\_\_\_\_.  
FULL NAME shall not be under  
the influence of, or consume alcohol or  
illicit drugs during any access visit.

\_\_\_\_\_. Neither \_\_\_\_\_ nor \_\_\_\_\_  
FULL NAME FULL NAME  
shall remove the children from the  
Province of Alberta [except for  
holidays] without the written consent  
of the other party or an order of this  
court.

\_\_\_\_\_. It is ordered that all peace officers in  
the Province of Alberta shall give  
whatever assistance is required to  
ensure compliance with this order.  
[Note: this clause is to be used only if  
the Applicant or Respondent has shown  
a tendency to refuse to follow court  
orders in the past.]





### Spousal Support:

\_\_\_\_. \_\_\_\_\_ shall pay to \_\_\_\_\_  
FULL NAME FULL NAME  
 the sum of \$ \_\_\_\_\_ per month for  
 spousal support, payable on the 1st day  
 of each and every month, commencing  
 \_\_\_\_\_ 1, \_\_\_\_\_  
MONTH YEAR

\_\_\_\_. Spousal support shall terminate on the  
 \_\_\_\_\_ day of \_\_\_\_\_,  
DATE MONTH YEAR  
 unless otherwise ordered by this court.

\_\_\_\_. Spousal support shall terminate upon  
 the happening of any of the following  
 events: (set out the events)

\_\_\_\_. \_\_\_\_\_ shall pay to \_\_\_\_\_  
FULL NAME  
 \_\_\_\_\_ spousal  
FULL NAME  
 support in the lump sum of \$ \_\_\_\_\_,  
 payable on or before the \_\_\_\_\_ day  
DATE  
 of \_\_\_\_\_,  
MONTH YEAR

### [Maintenance Enforcement Clause]

Note: must be in an Order if Order  
 includes child or spousal support or deals  
 with arrears of child or spousal support.

\_\_\_\_. The amounts owing under this Order  
 be paid to the Director of Maintenance  
 Enforcement, at 10365 - 97 Street, 7th  
 floor, Edmonton, Alberta, and shall be  
 enforced by the Director unless the  
 creditor files with the Court and the  
 Director a Notice, in writing, that  
 he/she does not wish the Order to be  
 enforced by the Director pursuant to  
 Section 7 of the *Maintenance  
 Enforcement Act*.

### Arrears:

#### [Arrears - Reduction/Cancellation]

\_\_\_\_. It is hereby ordered that there is no  
 reduction in the arrears of support.

\_\_\_\_. It is hereby ordered that arrears of  
 support are reduced to \$ \_\_\_\_\_.

\_\_\_\_. It is hereby ordered that arrears of  
 support are cancelled.

#### [Arrears - Repayment]

\_\_\_\_. It is hereby ordered that \_\_\_\_\_  
FULL NAME  
 shall pay the arrears as follows:  
 (details of repayment)



## Ex Parte / Consent Form

Use this form to prepare the Ex Parte / Consent form to be handed in with your Order.

Make sure that you:

- ☐ Complete line 1 with your Court File Number, and the Date.
- ☐ Complete line 2 with the names of the parties, as they appear on the court documents.
- ☐ Complete line 3 by stating what type of order you are requesting, for example *Custody*. Lines 4 and 5 have been completed for you.
- ☐ On the back of the form, briefly summarize your reasons for wanting the Order.
- ☐ Do not complete the bottom of the page ("For Clerk's Use").





## EX PARTE APPLICATION

1. Q.B. No. \_\_\_\_\_ Date: \_\_\_\_\_

2. Style of Cause \_\_\_\_\_

v.

3. Applying for: OR Order for:  
Fiat for:

4. Name of Solicitor: None - self represented

5. Name of Firm: Not applicable

6. Applicant's submissions shall be made on reverse.

---

### FOR CLERK'S USE

Signed: \_\_\_\_\_

Granted: \_\_\_\_\_ Comments: \_\_\_\_\_

Not Granted \_\_\_\_\_

Judge \_\_\_\_\_



## **Affidavit of Service (Service of the Order)**

Use this form to explain when and where the respondent received a copy of the Order made by the judge. It is the person who served the respondent who must provide the information about service and sign the Affidavit of Service in front of a commissioner for oaths.

Before filing the Affidavit of Service, make sure that:

- ☐ you include your full name and the respondent's full name in the form and on the backer
- ☐ the paragraphs that apply to you are filled in and the paragraphs that do not apply to you are crossed off
- ☐ one filed copy of the Order is attached, as well as the Delivery Confirmation Record and Acknowledgement of Receipt if you served by registered mail, as exhibits
- ☐ each one of the exhibits is lettered consecutively (Exhibit A, Exhibit B...)
- ☐ the person who served the documents signs the Affidavit of Service in front of a commissioner for oaths
- ☐ you make one copy of the original Affidavit of Service, including all exhibits

Use a ruler when crossing off the paragraphs that don't apply to you. Cross them out by drawing a straight line through the first and last lines and a diagonal line joining them to form a "Z." The person signing the Affidavit of Service must put his/her initials at the beginning and at the end of every strikeout.

Attach all exhibits at the end of the Affidavit just before the backer.





IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
IN THE JUDICIAL DISTRICT OF \_\_\_\_\_

BETWEEN:

YOUR NAME \_\_\_\_\_ Applicant

- and -

OTHER PARTY'S NAME \_\_\_\_\_ Respondent

## AFFIDAVIT OF SERVICE

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_,  
NAME OF DOCUMENT SERVER 'CITY' OR 'TOWN' OR OTHER NAME OF CITY OR TOWN ETC.

in the Province of Alberta, MAKE OATH AND SAY:

1. That I did on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally serve  
DATE OF SERVICE MONTH OF SERVICE YEAR  
\_\_\_\_\_, the Respondent, with a true copy of the Order,  
OTHER PARTY'S NAME  
which is annexed and marked as Exhibit 'A' to this my Affidavit, by delivering the said copy to  
and leaving the same with  
\_\_\_\_\_, the Respondent, at:  
OTHER PARTY'S NAME  
\_\_\_\_\_  
FULL ADDRESS WHERE OTHER PARTY WAS SERVED

**OR**

1. That I did on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally serve  
DATE OF SERVICE MONTH OF SERVICE YEAR  
\_\_\_\_\_, the Respondent, with a true copy of the Order,  
OTHER PARTY'S NAME  
which is annexed and marked as Exhibit 'A' to this my Affidavit, by enclosing the said copy in an  
envelope addressed to \_\_\_\_\_, the Respondent, at:  
OTHER PARTY'S NAME  
\_\_\_\_\_  
FULL ADDRESS OF OTHER PARTY  
and posting the same by registered mail at:  
\_\_\_\_\_  
ADDRESS OF POST OFFICE WHERE YOU MAILED THE MATERIAL



and annexed and marked as Exhibits 'B' and 'C' to this my Affidavit are the Delivery Confirmation Record and the Acknowledgement of Receipt for such registered mail.

SWORN BEFORE ME at the \_\_\_\_\_

of \_\_\_\_\_, in the Province

of Alberta, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE OF DOCUMENT SERVER

\_\_\_\_\_  
A COMMISSIONER FOR OATHS IN  
AND FOR THE PROVINCE OF ALBERTA





## **Insert your Exhibits here**

These include:

Exhibit 'A' Order

For service by registered mail:

Exhibit 'B' Delivery Confirmation Record

Exhibit 'C' Acknowledgement of Receipt

Make sure the exhibits are labelled alphabetically in the order in which they appear in the Affidavit.

Put them in the same order when inserting them here.



## Queen's Bench Chambers Offices

### Calgary

511 - 4th Street SW

Tel: 403-297-7400

### Drumheller

511 - 2nd Ave. West

Tel: 403-823-1700

### Edmonton

1A St. Winston Churchill Sq.

Tel: 780-422-3418

### Fort McMurray

4700 Franklin Avenue

Tel: 780-743-7136

### Grande Prairie

10200 - 98 Street

Tel: 780-538-5340

### Lethbridge

520 - 4th Street South

Tel: 403-381-1100

## Assistance in Obtaining Legal Advice

### Dial a Law - Lawyer Referral

Phone: 1-800-661-1099

### Legal Aid

Edmonton: 780-427-7575

Calgary: 403-297-2260

Other areas call: 310-0000

## Internet Sources of Information

Federal Justice Website: [www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)

Alberta Government Website: [www.gov.ab.ca](http://www.gov.ab.ca)

Alberta Justice Website: [www.gov.ab.ca/just](http://www.gov.ab.ca/just)

Alberta Courts Website: [www.albertacourts.ca](http://www.albertacourts.ca)

Action No: \_\_\_\_\_  
YOUR COURT ACTION NUMBER

### Mediation Unit

IN THE COURT OF QUEEN'S BENCH OF ALBERTA IN  
THE JUDICIAL DISTRICT OF

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### BETWEEN:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

YOUR NAME

Applicant

\_\_\_\_\_

\_\_\_\_\_

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- and -

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OTHER PARTY'S NAME

Respondent

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## AFFIDAVIT OF SERVICE

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## **Queen's Bench Chambers Offices**

### **Calgary**

611 - 4th Street SW  
Tel: 403-297-7405

### **Medicine Hat**

460 First Street SE  
Tel: 403-529-8710

### **Drumheller**

511- 3rd Ave. West  
Tel: 403-823-1700

### **Peace River**

9905 - 97 Avenue  
Tel: 780-624-6256

### **Edmonton**

1A Sir Winston Churchill Sq.  
Tel: 780-422-2418

### **Red Deer**

4909 - 48 Avenue  
Tel: 403-340-5220

### **Fort McMurray**

9700 Franklin Avenue  
Tel: 780-743-7136

### **St. Paul**

4704 - 50 Street  
Tel: 780-645-6324

### **Grande Prairie**

10260 - 99 Street  
Tel: 780-538-5340

### **Wetaskiwin**

4605 - 51 Street  
Tel: 780-361-1258

### **Lethbridge**

320 - 4th Street South  
Tel: 403-381-5196

## **Assistance in Obtaining Legal Advice**

### **Dial a Law - Lawyer Referral**

Phone: 1-800-661-1095

### **Legal Aid**

Edmonton: 780 - 427 - 7575  
Calgary: 403 - 297 - 2260  
Other areas call 310-0000

## **Internet Sources of Information**

Federal Justice Website:	<a href="http://www.canada.justice.gc.ca">www.canada.justice.gc.ca</a>
Alberta Government Website:	<a href="http://www.gov.ab.ca">www.gov.ab.ca</a>
Alberta Justice Website:	<a href="http://www.gov.ab.ca/just">www.gov.ab.ca/just</a>
Alberta Courts Website:	<a href="http://www.albertacourts.ab.ca">www.albertacourts.ab.ca</a>

